

hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 25, 1983.

(Secs. 201(a), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 17, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-23281 Filed 8-24-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dextrose/Glycine/Electrolyte

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for safe and effective use of dextrose/glycine/electrolyte for oral use in calves for control of dehydrations associated with diarrhea.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 125-961 providing for the use of dextrose/glycine/electrolyte powder orally in calves in the control of dehydration associated with diarrhea (scours). The NADA is approved and the regulations are amended to reflect the approval.

The basis of this approval is discussed in the freedom of information (FOI) summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(E)(2)(ii) (21 CFR 514.11(E)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 25.1(f)(1)(iv) and (g)) may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(j), 82 Stat. 347 (21 U.S.C. 360b(j))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.550 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.550 Dextrose/glycine/electrolyte.

(a) *Specifications.* The product is distributed in packets each of which contains the following ingredients: sodium chloride 8.82 grams, potassium phosphate 4.20 grams, citric acid anhydrous 0.5 gram, potassium citrate 0.12 gram, aminoacetic acid (glycine) 6.36 grams, and dextrose 44.0 grams.

(b) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) Dextrose/glycine/electrolyte is indicated for use in the control of dehydration associated with diarrhea (scours) in calves. It is used as an early treatment at the first signs of scouring. It may also be used as followup treatment following intravenous fluid therapy.

(2) Dissolve each packet in two quarts of warm water and administer to each calf as follows:

(i) *Scouring and/or dehydrated calves.* Feed 2 quarts of solution, twice daily for 2 days (four feedings). No milk or milk replacer should be fed during this period. For the next four feedings (days 3 and 4), use 1 quart of solution together with 1 quart of milk replacer. Thereafter, feed as normal.

(ii) *Newly purchased calves.* Feed 2 quarts of solution instead of milk as the first feed upon arrival. For the next scheduled feeding, use 1 quart of solution mixed together with 1 quart of milk or milk replacer. Thereafter, feed as normal.

(3) The product should not be used in animals with severe dehydration (down, comatose, or in a state of shock). Such animals need intravenous therapy. Oral therapy in these cases is too slow. Animals which cannot drink after initial intravenous therapy may need to be dosed with a stomach tube or esophageal tube. Adequate colostrum intake during the first 12 hours is essential for healthy, vigorous calves. Antibacterial therapy is often indicated in bacterial scours due to *E. coli* and/or *Salmonella*. The product does not contain antibacterial agents. A veterinarian should be consulted in severely scouring calves or cases requiring antibacterial therapy. The product is not nutritionally complete if administered by itself for long periods of time. It should not be administered beyond the recommended treatment period without the addition of milk or milk replacer.

Effective date. August 25, 1983.

(Sec. 512(j), 82 Stat. 347 (21 U.S.C. 360b(j)))

Dated: August 18, 1983.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 83-23282 Filed 8-24-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 11

[Dept. Reg. 108.834]

Appointment of Members of the Foreign Service

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State, with the concurrence of the Departments of Agriculture and Commerce, the Agency for International Development, and the United States Information Agency, is amending its regulations governing the appointment of members

of the Foreign Service to add a new § 11.30 relative to the appointment of Senior Foreign Service Officer Career Candidates.

This new program supplements the Junior, Mid-Level, and Specialist Foreign Service Career Candidate Programs (or similar department/agency programs) to meet identified Senior Foreign Service officer needs which cannot otherwise be met from within the ranks of the career Foreign Service.

EFFECTIVE DATE: August 18, 1983.

FOR FURTHER INFORMATION CONTACT:

Frontis B. Wiggins, Board of Examiners, Department of State, Washington, D.C., 20520 (703) 235-9232.

SUPPLEMENTARY INFORMATION: Section 101(b)(7) of the Foreign Service Act of 1980 (Pub. L. 96-465) established a Senior Foreign Service, characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise.

This new subpart provides the procedures establishing the eligibility of candidates for the Senior Foreign Service Career Candidates Program, the competitive requirements for that program, and the terms and conditions of appointment for successful candidates. It also provides procedures for making limited non-career Senior Foreign Service Officer appointments.

Analysis of Comments. No substantive comments were received by the Department of State during the public comment period. Except for certain minor editorial changes and the addition of a clarifying statement by the U.S. Information Agency in § 11.30(b)(1)(ii) concerning age at time of appointment, the final rule as published herewith is the same as the proposed rule published in the *Federal Register* of June 10, 1983 (48 FR 26834).

E.O. 12291, Federal Regulation

The Department of State has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, this rule relates solely to agency personnel and falls under section 1(a)(3) of E.O. 12291.

List of Subjects in 22 CFR Part 11

Foreign Service.

Accordingly, under the authority of sections 206(a) and 301(b) of the Foreign Service Act of 1980 (secs. 206(a) and 301(b), Pub. L. 96-465, 94 Stat. 2079 and 2083 (22 U.S.C. 3926 and 3941)), 22 CFR 11 is amended by revising the section heading and adding text to § 11.30, to read as follows:

§ 11.30 Senior Foreign Service Officer career candidate and limited non-career appointments.

(a) *General considerations.* (1) Career officers at the Senior Level normally shall be appointed as the result of promotion of Mid-Level career officers. Where the needs of the Foreign Service at the Senior Level cannot otherwise be met by this approach, limited appointments may be granted to applicants as Senior Career Candidates or as limited non-career appointees in accordance with these regulations. However, as required by section 305(b) of the Foreign Service Act of 1980 (hereinafter referred to as the Act), but qualified by sections 305(b)(1) and (2) and section 2403(c) of the Act, the limited appointment of an individual in the Senior Foreign Service shall not cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total members of the Senior Foreign Service.

(2) Successful applicants under the Senior Career Candidate Program will be appointed to Career Candidate status for a period not to exceed 5 years. Such limited Career Candidate appointments may not be renewed or extended beyond 5 years.

(3) Under section 306 of the Act, Senior Career Candidates may be found qualified to become career members of the Senior Foreign Service. Those who are not found to be so qualified prior to the expiration of their limited appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments. Separated candidates who originally were employees of a Federal department or agency, and who were appointed to the Senior Foreign Service with the consent of the head of that department or agency, will be entitled to reemployment rights in that department or agency in accordance with section 310 of the Act and section 3597 of title 5, United States Code.

(4) The following regulations shall be utilized in conjunction with section 593,

Volume 3, Foreign Affairs Manual ("Senior Foreign Service Officer Career Candidate Program"). (Also see Foreign Affairs Manual Circulars No. 8 [applicable to the Department of State only] and No. 9 [applicable to the Departments of State, Agriculture, and Commerce, the Agency for International Development, and the United States Information Agency], dated March 6, 1981.)

(b) *Senior Career Candidate appointments—(1) Eligibility requirements.* Senior Career Candidates must meet the following eligibility requirements:

(i) *Citizenship.* Each person appointed as a Senior Career Candidate must be a citizen of the United States.

(ii) *Age.* All career candidate appointments shall be made before the candidate's 60th birthday. Appointments by the United States Information Agency shall be made before the candidate's 58th birthday. The maximum age for appointment under this program is based on the requirement that all career candidates shall be able to: (A) Complete at least two full tours of duty, exclusive of orientation and training; (B) complete the requisite eligibility period for tenure consideration and (C) complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) *Service.* (A) On the date of application, an applicant must have completed a minimum of 15 years of professional work experience, including at least 5 years of service in a position of responsibility in a Federal Government agency or agencies or elsewhere equivalent to that of a Mid-Level Foreign Service officer (classes FS-1 through FS-3). The duties and responsibilities of the position occupied by the applicant must have been similar to or closely related to that of a Foreign Service officer in terms of knowledge, skills, abilities, and overseas work experience. In addition, an applicant must currently be in, or have been in, a position comparable to a Foreign Service officer of class 1 (FS-1), or higher.

(B) Applicants from outside the Federal Government, and Federal employees who at the time of application lack the 15 years of professional work experience or the 5 years of service in a position of responsibility as defined in the preceding paragraph, may, however, be considered if they are found to possess a combination of educational background, professional work experience, and skills

needed by the Foreign Service at the Senior Level in employment categories which normally are not staffed by promotion of Mid-Level career officers.

(C) Non-career members of the Senior Foreign Service of a Federal Government department or agency also may apply for the Senior Career Candidate Program if they meet the eligibility requirements for the program.

(iv) *Certification of need.* Before an application can be processed, the Director of Personnel of the foreign affairs agency concerned must certify that there is a need for the applicant as a Senior Career Candidate based upon (A) the projections of personnel flows and needs mandated by section 601(c)(2) of the Act, and (B) a finding that the combination of educational background, professional work experience, and skills possessed by the applicant is not expected to be available in the immediate future in sufficient numbers within the Senior Foreign Service, including by promotion and/or special training of career personnel. This certification of need will be requested by the Board of Examiners for the Foreign Service from the appropriate foreign affairs agency Director of Personnel.

(2) *Application.* All applicants for the Senior Career Candidate Program must apply in writing through the prospective employing agency to the Board of Examiners for consideration. The applicant shall submit a completed Standard Form 171, "Personnel Qualifications Statement," and Form DSP-34, "Supplement to Application for Federal Employment," to the Board. In addition, the applicant shall submit a narrative statement, not exceeding four typewritten pages in length, describing the applicant's pertinent background and professional work experience, which includes a statement of the applicant's willingness and ability to accept the obligation of world-wide service. The Board may request additional written information from the applicant following receipt of the initial application.

(3) *Qualifications evaluation panel.* (i) The Board of Examiners will establish a file for each applicant, placing in it all available documentation of value in evaluating the applicant's potential for service as a Senior Career Candidate. For an applicant from within the Federal Government, this will include the personnel file from the employing department or agency.

(ii) The complete file will be reviewed by a Qualifications Evaluation Panel of the Board of Examiners to determine whether the applicant meets the statutory and other eligibility

requirements, to assess the applicant's skills under the certification of need issued by the prospective employing agency, and to recommend whether the applicant should be examined for possible appointment as a Senior Career Candidate. If the Qualifications Evaluation Panel decides that the applicant is not eligible for examination, the prospective employing agency shall be informed by the Board of the reasons for that decision.

(4) *Written Examination.* The Board of Examiners normally will not require Senior Career Candidate applicants to undergo a written examination. However, the Board may, upon securing the agreement of the prospective employing agency, decide that such applicants should be required to take an appropriate written examination prescribed by the Board. If so, an applicant whose score on the written examination is at or above the passing level set by the Board will be eligible for selection for the oral examination.

(5) *Oral examination.*—(i) *Examining panel.* Applicants recommended by the Qualifications Evaluation Panel will be given an appropriate oral examination by a Panel of Senior Foreign Service deputy examiners of the Board of Examiners. The Oral Examining Panel shall be composed of at least two deputy examiners who are Senior Foreign Service career officers of the prospective employing agency, and at least one deputy examiner who is a Senior Foreign Service career officer from another foreign affairs agency operating under the Foreign Service Act. The Examining Panel shall be chaired by a deputy examiner who is a Senior Foreign Service career officer of the prospective employing agency. At least one of the Examining Panel members shall represent the functional or specialist field for which the applicant is being examined. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners.

(ii) *Criteria.* (A) The Examining Panel will question the applicant regarding the indicated functional or specialist field and other matters relevant to the applicant's qualifications for appointment as a Senior Career Candidate. Prior to the oral examination, the applicant will be asked to write an essay, on a topic related to Foreign Service work, to enable the Examining Panel to judge the applicant's effectiveness of written expression. This essay requirement may be waived at the request of the head of the prospective employing agency, if, for example, the applicant is a career member of the Senior Executive Service.

(B) The oral examination will be conducted under written criteria, established in consultation with the prospective employing agency and publicly announced by the Board of Examiners. The examination will seek to determine the ability of the applicant to meet the objective of section 101 of the Act, which provides for a Senior Foreign Service "characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise."

(iii) *Grading.* Applicants taking the oral examination will be graded as "recommended," or "not recommended" by the Examining Panel. Those graded as "recommended" also will be given a numerical score, under the standard Board of Examiners scoring criteria, for use by the Final Review Panel.

(6) *Background investigation.* Senior Career Candidate applicants recommended by the Examining Panel will be subject to the same background investigation as required for Junior and Mid-Level Foreign Service Officer Career Candidates. The background investigation shall be conducted to determine suitability for appointment to the Foreign Service.

(7) *Medical examination.* Senior Career Candidate applicants recommended by the Examining Panel, and their dependents, will be subject to the same medical examination as required for the Junior and Mid-Level Foreign Service Career Candidates. The medical examination shall be conducted to determine the applicant's physical fitness to perform the duties of a Foreign Service officer on a world-wide basis and, for applicants and dependents, to determine the presence of any physical, neurological, or mental condition of such a nature as to make it unlikely that they would be able to function on a world-wide basis. Applicants and/or dependents who do not meet the required medical standards may be given further consideration, as appropriate, under the procedures of the prospective employing agency.

(8) *Foreign language requirement.* Applicants recommended by the Examining Panel will be required to take a subsequent examination to measure their fluency in foreign languages, and/or their aptitude for learning them. Senior Career Candidates will be subject to the foreign language requirements established for their occupational category by their prospective employing agency. Senior Career Candidate applicants for the Foreign Commercial Service must demonstrate proficiency by examination

in two foreign languages. United States Information Agency Senior Career Candidates, other than Senior Specialist Career Candidates, must demonstrate proficiency in at least one foreign language. Except for the Foreign Commercial Service and the United States Information Agency, an applicant may be appointed without first having passed an examination in a foreign language, but the appointed Senior Career Candidate may not be commissioned as a Career Senior Foreign Service officer unless adequate proficiency in a foreign language is achieved. This language requirement will not apply to candidates in occupational categories which, in the judgment of the prospective employing agency, do not require foreign language proficiency.

(9) *Final review panel.* (A) The entire file of an applicant recommended by the Examining Panel will be reviewed and graded by a Final Review Panel, after the results of the background investigation, medical examination and language examination are received. The Final Review Panel will decide whether or not to recommend the applicant for appointment, taking into account all of the available information concerning the applicant.

(B) The Final Review Panel shall consist of a chairperson who shall be a Deputy Examiner who is a career Senior Foreign Service officer of the prospective employing agency, and at least two other Deputy Examiners of the Board of Examiners. Of the Deputy Examiners serving on the Final Review Panel, the majority shall be career Senior Foreign Service officers of the prospective employing agency; and at least one shall be a career Senior Foreign Service officer of one of the other foreign affairs agencies operating under the Act.

(10) *Certification of appointment.* The file of an applicant recommended by the Final Review Panel will be submitted to the Board of Examiners for consideration and approval. An applicant found by the Board to meet the standards for appointment as a Senior Foreign Service Career Candidate shall be so certified to the Director of Personnel of the prospective employing agency.

(c) *Limited non-career appointments.*

(1) Other Senior Foreign Service appointments may be made on a limited non-career basis for individuals who do not wish to compete for career appointments, but for whom a need can be certified by the Director of Personnel of the foreign affairs agency concerned. Such limited non-career senior appointees will be subject to the

eligibility requirements set forth in § 11.30(b)(1) (i) and (iv). The maximum age set forth in § 11.30(b)(1)(ii) does not apply to such appointments. However, because Foreign Service members generally are subject to the mandatory retirement age of 65, under section 812 of the Act, limited non-career Senior appointments normally will not extend beyond the appointee's 65th birthday. Limited non-career appointees of the Department of Commerce and the United States Information Agency will not be subject to the language requirements of § 11.30(b)(8). Applicants for limited non-career senior appointments will be subject to the same background investigation and medical examination required of career candidates, but normally they will not be subject to a written or oral examination, or to approval by the Board of Examiners. Processing procedures for such applicants will be established by the Director of Personnel of the foreign affairs agency concerned. Their appointments normally will be limited to the duration of the specific assignments for which they are to be hired, may not exceed 5 years in duration, and may not be renewed or extended beyond 5 years.

(2) Prior to the expiration of their limited non-career senior appointments, if they meet all the eligibility requirements set forth in § 11.30(b)(1), such individuals may elect to compete for career candidate status in the Senior Foreign Service by qualifying at that time for and taking the examinations required of career candidates. If appointed as career candidates, the length of service under their previous limited non-career appointments may be counted under the procedures of the employing agency as part of the trial period of service prescribed before a career candidate can receive a career appointment. The total period of limited appointment (non-career and career candidate) of such individuals may not exceed 5 years in duration.

(3) Nothing in this section will limit the right of an individual who has previously served as a limited non-career senior appointee from subsequently applying for consideration as a new applicant and being appointed as a Senior Career Candidate after a limited non-career appointment has expired.

(d) *Reporting requirement.* The Director of Personnel of each foreign affairs agency shall report annually to the Director General of the Foreign Service, Department of State, the number and nature of the limited Senior Foreign Service appointments (non-

career and career candidates) made by that agency under these regulations.

Dated: August 18, 1983.

Clint A. Lauderdale,

Deputy Assistant Secretary for Personnel,
Bureau of Personnel, Department of State.

[FR Doc. 83-23251 Filed 8-24-83; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 752

Landscape and Roadside Development

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is publishing this final rule to implement Section 111 of the Surface Transportation Assistance Act of 1982 (STAA of 1982) which allows the States to permit vending machines in safety rest areas on the rights-of-way of the Interstate highway system. The regulations are modified to allow the installation and operation of vending machines, to exclude vending machines from the prohibition against charging the public for goods and services, and to make the installation, operation, and maintenance of vending machines ineligible for Federal-aid funding.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Seppo I. Sillan, Chief, Geometric Design Branch, (202) 426-0312 or Deborah A. Dull, Office of the Chief Counsel, (202) 426-0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Surface Transportation Assistance Act of 1982 (STAA of 1982) was enacted by the 97th Congress (Pub. L. 97-424, 96 Stat. 2097) on January 6, 1983. It provides that, notwithstanding 23 U.S.C. 111, any State may permit the placement of vending machines in rest and recreation areas and in safety rest areas constructed or located on rights-of-way of the Interstate highway system. Section 111 of 23 U.S.C., prohibits automotive service stations or other commercial establishments within the rights-of-way on the Interstate system.

Section 111 of the STAA of 1982 is a logical extension of a demonstration program mandated by Section 153 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2716). In that project Congress directed the Secretary of Transportation to permit the installation of vending machines in rest and recreation areas and in safety rest areas constructed or located on the rights-of-way of the Interstate highway system. In addition to granting the Secretary authority to determine the articles which could be dispensed, Section 153 also imposed upon the Secretary responsibility for reporting the results of the demonstration project together with any recommendations to Congress, no later than two years after enactment.

Five States, California, Connecticut, Georgia, Kentucky, and Massachusetts participated in the demonstration project. The five States were requested to evaluate the public acceptance and economic benefits of such services as well as any problems related to litter and vandalism and to report their findings to the FHWA. The general findings of this demonstration project indicated that an adequately controlled vending machine operation at Interstate safety rest areas may be of public benefit. These findings together with a recommendation that the demonstration project be extended for an additional two years and expanded to include additional States before a final evaluation was completed are contained in a report transmitted to Congress on November 26, 1980.

The FHWA's existing regulations governing safety rest areas and information centers within safety rest areas as well as eligibility for Federal-aid in the construction and operation of such areas and centers are contained in 23 CFR Part 752, entitled "Landscape and Roadside Development". This rule amends these regulations in several areas discussed below.

Discussion of Regulations

Section 752.1 Purpose.

The provision of guidelines and policies regarding vending machines in safety rest areas has been added to the purpose statement.

Section 752.5 Safety rest areas.

A new paragraph (b) has been added expressly to permit States to allow vending machines to be located in existing or constructed safety rest areas. Since information centers on the Interstate system are within safety rest

areas, vending machines also may be allowed in those centers. A vending machine is a coin or currency operated machine capable of automatically dispensing an article or product. By limiting installations to vending machines, it is expressly intended to preclude a vendor from establishing a stand or shop for the purpose of selling the article or product and also to exclude any form of personal salesmanship.

The decision whether to allow the vending machines is discretionary with the States. Unlike the demonstration program in which the Secretary determined the articles that could be dispensed, the States is given authority to make that determination, with the exception that the dispensing of petroleum products or motor vehicle replacement parts will not be allowed. This ban is based on the prohibition in 23 U.S.C. 111 against automotive service stations on the rights-of-way of the Interstate system which Section 111 of the STAA did not modify.

New paragraph (c) establishes that the State highway agency need not operate the vending machines directly. However, States that decide to allow vending machines must give priority to vending machines operated by the blind through the State licensing agency designated pursuant to the Randolph-Sheppard Act (20 U.S.C. 107).

Paragraph (g) (paragraph (e) redesignated) is amended to allow the public to be charged for items dispensed by vending machines.

Section 752.8 Privately operated information centers and systems.

Paragraph (c)(5) is amended to allow the public to be charged for items dispensed by vending machines.

Section 752.11 Federal participation.

Paragraph (d) is amended to make the installation, operation, or maintenance of vending machines ineligible for Federal-aid. This ineligibility for Federal assistance includes any modification in existing rest area facilities or any extra work expressly for vending machines in the construction of new facilities.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the amendments in this document are being issued for the purpose of literally complying with Section 111 of the STAA of 1982 and do not reflect interpretation of statutory language, public comment is

impracticable and unnecessary. Therefore, the FHWA finds good cause to make the amendments final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information since the statutory language incorporated in the regulation requires no interpretation and provides for no administrative discretion. Since the placement of vending machines will be left to the discretion of the individual States and Federal funds will not be involved, the economic impact of this rulemaking document will be minimal, therefore a full regulatory evaluation is not required.

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, because it does not impose any further collection or reporting requirements on the States.

In consideration of the foregoing and under the authority of section 111, Pub. L. 97-424, 96 Stat. 2106 (23 U.S.C. 111); 23 U.S.C. 315; and 49 CFR 1.48(b), the Federal Highway Administration hereby amends Chapter 1, Part 752 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The procedures provided in OMB Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs.)

List of Subject in 23 CFR Part 752

Grant programs—transportation, Highways and roads, Rights-of-way—roadside development, Rights-of-way—safety rest areas, Vending machines.

Issued on: August 16, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

1. Section 752.1 is amended by revising the section to read as follows:

§ 752.1 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies regarding landscaping and scenic enhancement programs, safety rest areas, and scenic overlooks under 23 U.S.C. 319; information centers and systems under 23 U.S.C. 131(i); and

vending machines in safety rest areas under 23 U.S.C. 111.

2. Section 752.5 is amended by adding new paragraphs (b) and (c) and redesignating existing paragraphs (b) through (e) as (d) through (g). Also, existing paragraph (e) (herein redesignated as paragraph (g)) is revised. All changes read as follows:

§ 752.5 Safety rest areas.

(b) The State may permit the placement of vending machines in existing or new safety rest areas located on the rights-of-way of the Interstate system for the purpose of dispensing such food, drink, or other articles as the State determines are appropriate and desirable, except that the dispensing by any means, of petroleum products or motor vehicle replacement parts shall not be allowed. Such vending machines shall be operated by the State.

(c) The State may operate the vending machines directly or may contract with a vendor for the installation, operation, and maintenance of the vending machines. In permitting the placement of vending machines the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act, U.S.C. 107(a)(5).

(g) No charge to the public may be made for goods and services at safety rest areas except for telephone and articles dispensed by vending machines.

3. Section 752.8 is amended by revising paragraph (c)(5) to read as follows:

§ 752.8 Privately operated information centers and systems.

(c) * * *
(5) No charge to the public may be made for goods or services except telephone and articles dispensed by vending machines.

4. Section 752.11 is amended by adding the following sentence at the end of paragraph (d) to read:

§ 752.11 Federal participation.

(d) * * * Federal-aid funds may not be used for installation, operation, or maintenance of vending machines.

[FR Doc. 83-23061 Filed 8-24-83; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth an amended regulation pertaining to the Department of the Navy Privacy Act Program. The rule reflects changes in the Secretary of the Navy Instruction 5211.5 series from which it is derived.

EFFECTIVE DATE: August 25, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken (Op-09B1P), Office of the Chief of Naval Operations, Washington, D.C. 20350, Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 701, Subpart F and G, derived from the Secretary of the Navy Instruction 5211.5 series which implements within the Department of the Navy the provisions of Department of Defense Directive 5400.11, Department of Defense Privacy Program (32 CFR Part 286a) pertaining to action on requests for release of personal information contained in systems of records under the Privacy Act (5 U.S.C. 552a). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Parts 296 and 701, Subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 701, Subparts F and G, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Gwendolyn R. Aitken (Op-09B1P), Office of the Chief of Naval Operations, Washington, DC 20350. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

Lists of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 32 CFR Part 701, Subparts F and G are amended. Subparts A, B, C, D, and E remain unaffected by this amendment. Subparts F and G are revised to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Sec.

- 701.100 Purpose.
- 701.101 Scope and effect.
- 701.102 Policy, responsibilities, and authority.
- 701.103 Definitions.
- 701.104 Notification, access, and amendment procedures.
- 701.105 Disclosure to others and disclosure accounting.
- 701.106 Collection of personal information from individuals.
- 701.107 Safeguarding personal information.
- 701.108 Exemptions.
- 701.109 Contractors.
- 701.110 Judicial sanctions.
- 701.111 Rules of access to agency records.
- 701.112 Rules for amendment requests.
- 701.113 Rules of conduct under the Privacy Act.
- 701.114 Blanket routine uses.

Subpart G—Privacy Act Exemptions

- 701.115 Purpose.
- 701.116 Exemption for classified records.
- 701.117 Exemptions for specific Navy records systems.
- 701.118 Exemptions for specific Marine Corps records systems.

Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Authority: 5 U.S.C. 552a, 32 CFR Part 286a.

§ 701.100 Purpose.

32 CFR Part 701, Subparts F and G delineate revised policies, conditions, and procedures that govern collecting personal information, and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Navy in systems of records. They implement 5 U.S.C. 552a (the Privacy Act of 1974), and the Department of Defense Directive 5400.11 series, Personal Privacy and Rights of Individuals Regarding Their Personal Records (DOD Dir. 5400.11) (32 CFR Part 286a), and prescribe:

(a) Procedures whereby individuals can be notified if any system of records contain a record pertaining to them.

(b) Requirements for verifying the identity of individuals who request their records before the records are made available to them.

(c) Procedures for granting access to individuals upon request for their records.

(d) Procedures for reviewing a request from individuals to amend their records, for making determinations on requests, and for appealing adverse determinations.

(e) Procedures for notifying the public of the existence and character of each system of records.

(f) Procedures for disclosing personal information to third parties.

(g) Procedures for exempting systems of records from certain requirements of 5 U.S.C. 552a.

(h) Procedures for safeguarding personal information.

(i) Rules of conduct for the Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a. See § 701.113.

§ 701.101 Scope and effect.

(a) *Applicability.* 32 CFR Part 701, Subparts F and G, apply throughout the Department of the Navy, and to any contractor maintaining a system of records to accomplish a Department of the Navy mission. For the purposes of any criminal liabilities adjudged, any contractor and any employee of such contractor shall be considered to be an employee of the Navy Department. Additionally, all requests by individuals for records (located in a system of records) pertaining to themselves which specify either the Freedom of Information Act or the Privacy Act (but not both) shall be treated under the procedures established under the Act specified in the request. When the request specifies, that it be processed under both the Freedom of Information Act and the Privacy Act, Privacy Act procedures should be employed. The individual should be advised that, while the Department of the Navy has elected to process his/her request in accordance with Privacy Act procedures, he/she can be assured that he/she will be provided with all the information that can be released under either the Privacy Act or the Freedom of Information Act. Requests may fall, however, within the scope of other applicable directives as follows:

(1) Requests from an individual about another individual are governed by the provisions of 5 U.S.C. 552 (Freedom of Information Act) and the SECNAVINST

5720.42 series (32 CFR Part 701, Subparts A through D).

(2) Requests by the General Accounting Office for information or records pertaining to individuals, except with respect to the requirement for disclosure accountings as provided in § 701.107(c) are governed by the SECNAVINST 5741.2 series, Relations with the General Accounting Office.

(3) Official and third party requests for information from systems of records controlled by the Office of Personnel Management shall be governed by 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual.

(b) *Other directives.* In case of a conflict, 32 CFR Part 701, Subparts F and G, take precedence over any existing Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (Freedom of Information Act) and implemented by the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

§ 701.102 Policy, responsibilities, and authority

(a) *Policy.* Subject to the provisions of 32 CFR Part 701, Subparts F and G, it is the policy of the Department of the Navy to:

(1) Ensure that all its personnel at all echelons of command or authority comply fully with 5 U.S.C. 552a to protect the privacy of individuals from unwarranted invasions. Individuals covered by this protection are living citizens of the United States or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor has the same rights as the individual or minor and may act on the individual's or minor's behalf. (A member of the Armed Forces is not a minor for the purposes of 32 CFR Part 701, Subparts F and G).

(2) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law of Executive order, and disclose this information only as authorized by 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals, only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(3) Keep only that personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Let individuals have access to, and obtain copies of, all or any portions of their records, subject to exemption procedures authorized by law and 32 CFR Part 701, Subparts F and G.

(5) Let individuals request amendment of their records when discrepancies proven to be erroneous, or untimely, incomplete, or irrelevant, are noted.

(6) Let individuals request an administrative review of decisions that deny them access to, or refuse to amend their records.

(7) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(8) Maintain no records describing how an individual exercises his/her rights guaranteed by the First Amendment (freedom of religion, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(i) Expressly authorized by statute;

(ii) Authorized by the individual about whom the record is maintained;

(iii) Within the scope of an authorized law enforcement activity; or

(iv) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his/her record concerning religious preference, particularly that required in emergency situations.

(9) Maintain only systems of records which have been published in the Federal Register.

(b) *Responsibilities.* (1) The Chief of Naval Operations (Op-09B) is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G within the Department of the Navy. Additionally, the Chief of Naval Operations (Op-09B) is designated as the principal Privacy Act coordinator for the Department of the Navy.

(2) The Commandant of the Marine Corps is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, within the Marine Corps.

(3) Each addressee is responsible for the execution of the requirements of 5 U.S.C. 552a within his/her organization and for implementing and administering a Privacy Act program in accordance

with the provisions of 32 CFR Part 701, Subparts F and G. Each addressee shall designate an official to be Privacy Act coordinator to:

(i) Serve as the principal point of contact on all Privacy Act matters.

(ii) Provide training for activity/command personnel in the provisions of 5 U.S.C. 552a.

(iii) Issue implementing instruction.

(iv) Review internal directives, practices, and procedures, including those for forms and records, for conformity with 32 CFR Part 701, Subparts F and G, when applicable.

(v) Compile and submit input for the annual report and record systems notices.

(vi) Maintain liaison with records-management officials as appropriate (e.g., maintenance and disposal procedures and standards, forms, and reports).

(4) The systems managers are responsible for (with regard to systems of records under their cognizance):

(i) Ensuring that all personnel who in any way have access to the system or who are engaged in the development of procedures or handling records be informed of the requirements of 5 U.S.C. 552a and any unique safeguarding or maintenance procedures peculiar to that system.

(ii) Determining the content of and setting rules for operating the system.

(iii) Ensuring that the system has been published in the *Federal Register* and that any additions or significant changes are prepublished in the *Federal Register*.

(iv) Answering requests for information for individuals.

(v) Keeping accountability records of disclosures.

(vi) Evaluating information proposed for each system for relevance and necessity during the developmental phase of a new system or when an amendment to an existing system is proposed; in addition, annually comparing the system with the records system notice published in the *Federal Register* and considering:

(A) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(B) Specific adverse consequences of not collecting each category of information.

(C) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(D) Length of time the information is needed.

(E) Cost of maintaining the data compared to the risk or adverse consequences of not maintaining it.

(F) Necessity and relevance of the information to the mission of the command.

(vii) Keeping the Privacy Act coordinator informed of non-routine Privacy Act requests.

(5) Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. Employees shall:

(i) Not disclose any information contained in a system of records by any means of communication to any person, or agency, except as authorized in 32 CFR Part 701, Subparts F and G.

(ii) Not maintain unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(iii) Safeguard the privacy of individuals and the confidentiality of personal information contained in a system of records.

(iv) Familiarize themselves with the Rules of Conduct. See § 701.113.

(c) *Denial authority.* Only the following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny requests for notification, access, and amendment made under 32 CFR Part 701, Subparts F and G, when the records relate to matters within their respective areas of command, technical, or administrative responsibility, as appropriate:

(1) *For the Navy Department.* The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Material; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Commander, Naval Medical Command; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law).

(2) *For the shore establishment.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General*, to convene general courts martial.

(ii) The Director, Naval Investigative Service and the Assistant Commander (Management and Operations), Naval Legal Service Command.

(3) *In the operating forces.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General*, to convene general courts martial.

(d) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel.

(2) The Judge Advocate General and the General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of requests for notification, access, or amendment of records, as set forth in § 701.104 (a), (b), and (c) other than as indicated in paragraph (d)(1) of this section and other than initial denials of requests for notification, access, or amendment of records from civilian Official Personnel Folders or records contained any other Office of Personnel Management (OPM) forms, which will be reviewed by OPM.

(e) The authority of the Secretary of the Navy, as the head of an agency, to request records subject to the 5 U.S.C. 552a from an agency external to the Department of Defense for civil or criminal law enforcement purposes, pursuant to subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

§ 701.103 Definitions.

For the purposes of 32 CFR Part 701, Subparts F and G, the following meanings apply:

(a) *Access.* Reviewing or obtaining copies by individuals of records that pertain to themselves, or by agents designated by the individuals, or by individual's legal guardians, that are a part of a system of records.

(b) *Agency.* For purposes of disclosing records, the Department of Defense is an "agency". For all other purposes, including applications for access, appeals from denials, exempting systems of records, etc., the Department of the Navy is the "agency".

(c) *Confidential source.* Any individual or organization that has given information to the Federal government under: (1) An express promise that the identity of the source would be

withheld, or (2) an implied promise to withhold the identity of the source made before 27 September 1975.

(d) *Disclosure.* The conveyance of information about an individual, by any means of communication, to an organization or to an individual who is not the subject of the record. In the context of the 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, this term only applies to personal information that is part of a system of records.

(e) *Individual.* A living citizen of the United States, or an alien lawfully admitted for permanent residence; or a member of the United States naval service, including a minor. Additionally, the legal guardian of an individual or a parent of a minor has the same rights as the individual, and may act on behalf of the individual concerned under 32 CFR Part 701, Subparts F and G. Members of the naval service, once properly accepted, are not minors for purposes of 32 CFR Part 701, Subparts F and G. The use of the term "individual" does not, however, vest rights in the representatives of decedents to act on behalf of the decedent under 32 CFR Part 701, Subparts F and G (except as specified in § 701.105(b), nor does the term embrace individuals acting in an entrepreneurial capacity (e.g., sole proprietorships and partnerships).

(f) *Maintain.* When used in the context of records on individuals, includes collect, file or store, preserve, retrieve, update of change, use, or disseminate.

(g) *Official use.* Within the context of 32 CFR Part 701, Subparts F and G, this term encompasses those instances in which officials and employees of the Department of the Navy have a demonstrated need for use of any record to complete a mission or function of the Department, or which is prescribed or authorized by a directive.

(h) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(i) *Privacy Act request.* A request from an individual for information about himself/herself concerning the existence of, access to, or amendment of records that are located in a system of records. (The request must cite or reasonably imply that it is pursuant to 5 U.S.C. 552a).

(j) *Record.* Any item, collection, or grouping of information about an individual that is maintained by or for the Department of the Navy or by an element of the Navy Department, operating forces, or shore establishment, including, but not limited to, the

individual's education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(k) *Risk assessment.* The application of steps in an analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center computerized system, periodically, to select economically, feasible safeguards.

(l) *Routine use.* The disclosure of a record or the use of such record for a purpose which is compatible with the purpose for which the records were collected. Routine use encompasses not only common and ordinary uses but also all proper and necessary uses of the record even if any such use occurs infrequently.

(m) *Statistical record.* A record maintained for statistical research or reporting purposes only, which may not be used in whole or in part in making any determination about an identifiable individual.

(n) *System of records.* A group of records from which information "is", as opposed to "can be", retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The capability to retrieve information by personal identifiers alone does not subject a system of records to 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G.

(o) *System manager.* That official who has overall responsibility for records within a particular system. He/she may serve at any level in the Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (e.g., for local records, at the local activity).

(p) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.104 Notification, access, and amendment procedures.

(a) *General.*—(1) *Summary of requirement.* (i) Notification procedures are provided under subsection (e)(4) of 5 U.S.C. 552a to enable an individual to ascertain from the appropriate system manager whether or not a particular system of records contains information pertaining to him/her. If the system does contain such a record, the individual may request access to the record, pursuant to subsection (d)(1) of 5 U.S.C. 552a, to ascertain the contents.

Amendment procedures are provided under subsections (d)(2) and (3) of 5 U.S.C. 552a, to enable the individual to seek correction or deletion of information about himself/herself in the record which he/she considers to be erroneous. If a request for amendment is denied after a final determination, the individual may file a "statement of dispute," to be noted in the pertinent records and to be shown in connection with disclosures of such records. Individuals have a statutory right to obtain administrative review of denials of requests for amendment, and by 32 CFR Part 701, Subparts F and G, are accorded the right to obtain similar review of denials of requests for notification and access.

(ii) The provisions of this section apply to requests by individuals, or their authorized representatives, for records pertaining to themselves that are contained in systems of records. 32 CFR Part 701, Subparts F and G, does not, however, require that an individual be given notification or access to a record that is not retrieved by name or other individual identifier. Requests for amendment of records contained in a system of records will normally be processed in accordance with 32 CFR Part 701, Subparts F and G, unless: (A) They are routine requests for administrative corrections not specifying that they are not made under 32 CFR Part 701, Subparts F and G or 5 U.S.C. 552a, or (B) they are requests addressed to the Board for Correction of Naval Records, which is governed by other authority.

(2) *System rules.* Systems managers are responsible for ensuring that, for each system of records maintained, a records system notice is published in the Federal Register, stating the procedures by which an individual may be notified whether the system contains records pertaining to him/her. Additionally, systems managers are responsible for establishing, and making available to individuals upon request, rules applicable to requests for access or amendment of records within each system. Such rules must conform to the requirements of 32 CFR Part 701, Subparts F and G, and to matters indicated in §§ 701.111 and 701.112. In addition, they should contain the following:

(i) A statement of custodial officials other than the system manager, if any, authorized to grant requests for notification or access;

(ii) The minimum formal requirements for requests, including applicable requirements for requests to be reduced to writing; and, in the case of a request

to provide the requester's records directly to an authorized representative who is other than the parent of a minor, or other legal guardian—an authorization signed within the past 45 days specifying the records to be released and the recipient of the records (notarized authorizations may be required if the sensitivity of the information in the records warrants);

(iii) The information which should be provided by the individual to assist in identifying relevant systems of records and the individual identifiers (e.g., full name, social security number, etc.) needed to locate records in the particular system; and,

(iv) The requirements for verifying the requester's identity, to which the following policies apply:

(A) Prior to being given notification or access to personal information, an individual is required to provide reasonable verification of his/her identity. No verification of identity, however, shall be required of an individual seeking notification or access to records which are otherwise available to any member of the public under 32 CFR Part 701, Subparts A through D.

(B) In the case of an individual who seeks notification, access, or amendment in person, verification of identity will normally be made from those documents that an individual is likely to have readily available, such as an employee or military identification card, driver's license, or medical card.

(C) When notification, access, or amendment is requested by mail, verification of identity may be obtained by requiring the individual to provide certain minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know. If the sensitivity of the information in the record warrants, a signed and notarized statement of identity may be required.

(D) When a record has already been identified, an individual shall not be denied notification or access solely for refusing to disclose his/her social security number.

(3) *Responsibilities for action on initial requests.* (i) Subject to the provisions of this paragraph and the applicable system manager's rules, requests for notification and access may be granted by officials having custody of the records, even if they are not systems managers or denial authorities. Requests for amendment may be granted by the cognizant system manager. Denials of initial requests for notification, access, or amendment of records under 32 CFR Part 701, Subparts F and G, however,

may be made only by those officials designated as denial authorities under § 701.102(c).

(ii) *Investigative/non-investigative records.*

(A) Copies of investigative records that are compiled by an investigative organization, but are in the temporary custody of another organization, which is holding the record for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the originating investigative organization. Upon completion of the official action, the investigative reports are required to be destroyed or returned, in accordance with the instructions of the originating investigative activity. Individuals seeking notification or access, or making other requests under 32 CFR Part 701, Subparts F and G, concerning such records, shall be directed to the originating investigative organization. For example, a request for notification or access to a Naval Investigative Service report in the temporary custody of another activity should be forwarded directly to the Director, Naval Investigative Service.

(B) Copies of non-investigative records (including medical and/or personnel) located in the files of another agency must be referred for release determination. The originating agency may either authorize the records' release by the agency that located them or request that they be referred for processing. The individual requesting his/her records will be notified of records referred for processing.

(4) *Blanket requests not honored.* Requests seeking notification and/or access concerning all systems of records within the Department of the Navy, or a component thereof, shall not be honored. Individuals making such requests shall be notified that: (i) Requests for notification and/or access must be directed to the appropriate system manager for the particular record system, as indicated in the current Federal Register systems notices (a citation should be provided), and (ii) requests must either designate the particular system of records to be searched, or provide sufficient information for the system manager to ascertain the appropriate system. Individuals should also be provided with any other information needed for obtaining consideration of their requests.

(5) *Criteria for determinations.* (i) As further explained in § 701.108, portions of designated records systems (indicated in subpart G of this part) are exempt, in certain circumstances, from the requirement to provide notification, access, and/or amendment. Only denial authorities (and the designated review

authority) may exercise an exemption and deny a request, and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose served by denying the request. A request for notification may be denied only when an applicable exemption has been exercised by a denial or review authority. A request for access may be denied by a denial or review authority, in whole or part, on the basis of the exercise of an applicable exemption or for the reasons set forth in paragraph (a)(5) (ii) or (iii) of this section.

(ii) Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority (or the designated review authority) may deny an individual's request for access to that record pursuant to subsection (d)(5) of 5 U.S.C. 552a: *Provided*, That there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(iii) As indicated in § 701.103(e), where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this section. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and § 701.105, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian. (Members of the naval service, once properly accepted, are not minors for the purposes of 32 CFR Part 701, Subparts F and G.)

(iv) Subject to the provisions of this section, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse effect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(6) Time requirements for making acknowledgements and determinations.

(i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) of receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he/she may expect to be advised of action taken on the request. No separate acknowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10 working-day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determinations and required action on initial requests for notification, access or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

(b) Notification procedures. (1) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request, because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified, or the individual has not furnished the information needed to locate a record within the system; or

(C) The request is erroneously addressed to an official having no responsibility for the record or system of records in question;

Inform the individual of the correct means, or additional information needed, for obtaining consideration of his/her request for notification.

(ii) Notify the individual, in writing, whether the system of records contains a record pertaining to him/her (a notification that a system of records contains no records pertaining to the individual shall not be deemed a denial);

(iii) If it is determined that notification should be denied under an available exemption and the official is not a denial authority, forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(iv) If the official is a denial authority, take the appropriate action prescribed in paragraph (b)(2) of this section.

(2) *Action by denial authority.* (i) If the denial authority determines that no exemption is available or that an available exemption should not be exercised, he/she shall provide the requested notification, or direct the system manager or appropriate custodial official to do so.

(ii) If the denial authority determines that an exemption is applicable and that denial of the notification would serve a significant and legitimate governmental purpose (e.g., avoid interfering with an on-going law enforcement investigation), he/she shall promptly send the requesting individual an original and one copy of a letter stating that no records from the systems of records specified in the request are available to the individual under the 5 U.S.C. 552a. The letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter to the:

Judge Advocate General (Code 14),
Department of the Navy, 200 Stovall Street,
Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for requesting the review.

(iii) A copy of the letter denying notification shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as appropriate. These officials shall maintain copies of all denial letters in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(3) Action by reviewing authority.

Upon receipt of a request for review of a determination denying an individual's initial request for notification, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. That official is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination. Within 30 working days of receipt of the request for review, whenever practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final determination and the action thereon. If the final determination is to grant notification, the Judge Advocate General may either provide the

notification or direct the system manager to do so. If the final determination is to deny notification, the individual shall be informed that it has been determined upon review that there are no records in the specified systems of records that are available to him/her under the Privacy Act.

(c) Access procedures—(1) Fees. When a copy of a record is furnished to an individual in response to a request for access, he/she will normally be charged duplication fees only. When duplication costs for a Privacy Act request total less than \$30, fees may be waived automatically. Normally, only one copy of any record or document will be provided.

(i) Use the following fee schedule:

Office copy (per page).....	\$10
Microfiche (per fiche).....	25

(ii) Checks or money orders to defray fees/charges should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(iii) Do not charge fees for:

(A) Performing record searches.

(B) Reproducing a document for the convenience of the Navy.

(C) Reproducing a record in order to let a requester review it if it is the only means by which the record can be shown to him/her (e.g., when a copy must be made in order to delete information).

(D) Copying a record when it is the only means available for review.

(2) Action upon receipt of request. Subject to the provisions of this section, upon receipt of an individual's initial request for access, the system manager or other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified or the individual has not furnished the information needed to locate a record within a system; or

(C) The request is erroneously addressed to an official not having responsibility for granting access to the record or system of record in question; Inform the individual of the correct means, or additional information needed, for obtaining consideration or his/her request for access.

(ii) If it is determined that the individual should be granted access to

the entire record requested, the official shall inform the individual, in writing, that access is granted, and shall either:

(A) Inform the individual that he/she may review the record at a specified place and at specified times, that he/she may be accompanied by a person of his/her own choosing to review the record (in which event he/she may be asked to furnish written authorization for the record to be discussed in the accompanying person's presence), and that he/she may further obtain a copy of the record upon agreement to pay a duplication fee; or

(B) Furnish a copy of the record, if the individual requested that a copy be sent and agreed in advance to pay duplication fees unless such fees are waived.

(iii) If it is necessary to deny the individual access to all or part of the requested record, and,

(A) The official is not a denial authority—forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(B) The official is a denial authority—take the action prescribed in paragraph (c)(3)(ii) or (iii) of this section.

(3) *Action by denial authority*—(i) If the denial authority determines that access should be granted to the entire record, he/she shall promptly make it available to the requesting individual in the manner prescribed in paragraph (c)(2)(ii) of this section, or direct the system manager to do so.

(ii) If the denial authority determines that access to the entire record should be denied under the criteria specified in paragraph (a)(5)(i), (ii), or (iii) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing the individual of the denial of access and the reasons therefor, including citation of any applicable exemptions and a brief discussion of the significant and legitimate governmental purpose(s) served by the denial of access. The denial letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter:

(A) If the record is from a civilian Official Personnel Folder or is contained on any other OPM form, to:

Director, Bureau of Manpower, Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(B) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian

personnel records or an employee's grievance or appeal file, to:

General Counsel, Department of the Navy, Washington, D.C. 20360; or

(C) If for any other record, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for seeking review of the initial determination.

(iii) A copy of the denial letter shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as provided in paragraph (b)(2)(iii) of this section.

(iv) If the denial authority determines that access to portions of the record should be denied under the criteria specified in paragraph (a)(5)(i), (ii), (iii) of this section, he/she shall promptly make an expurgated copy of the record available to the requesting individual and issue a denial letter as to the portions of the record that are required to be deleted.

(4) *Action by reviewing authority.*

Upon receipt of a request for review of a determination denying an individual's initial request for access, the Judge Advocate General or the General Counsel shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He/she is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination.

(i) Within 30 days of receipt of the request for review, if practicable, the Judge Advocate General or the General Counsel shall inform the requesting individual, in writing, of the final determination and the action thereon.

(ii) If such a determination has the effect of granting a request for access, in whole or in part, the Judge Advocate General or the General Counsel may either provide access in accordance with paragraphs (c)(2)(ii)(A) or (B) of this section, or direct the system manager to do so.

(iii) If the final determination has the effect of denying a request for access, in whole or in part, the individual shall be informed of the reason(s) and statutory basis for the denial—including regulatory citations for any exemption exercised and an explanation of the significant and legitimate governmental purpose served by exercising the exemption—and his/her rights to seek judicial review.

(iv) If the determination is based, in whole or part, on a security classification, the individual shall be apprised of the matters set forth in § 701.9(d)(4)(ii) of this part relating to declassification review and appeal.

(d) *Amendment procedures*—(1) *Criteria for determinations on requests for amendment.*

(i) As further explained in § 701.108, many of the systems of records listed in Subpart G of this part, are exempt, in part, from amendment requirements. Such exemptions, where applicable, may be exercised only by denial authorities (and by the designated review authorities upon requests for review of initial denials), and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose to be served by exercising the exemption.

(ii) If an available exemption is not exercised, an individual's request for amendment of a record pertaining to himself/herself shall be granted if it is determined, on the basis of the information presented by the requester and all other reasonably available related records, that the requested amendment is warranted in order to make the record sufficiently accurate, relevant, timely, and complete as to ensure fairness in any determination which may be made about the individual on the basis of the record. If the requested amendment would involve the deletion of particular information from the record, the information shall be deleted unless it is determined that—in addition to being accurate, relevant to the individual, timely, and complete—the information is relevant and necessary to accomplish a purpose or function required to be performed by the Department of the Navy pursuant to a statute or Executive order.

(iii) The foregoing is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any changes in such records should be made only through the procedures established for changing such records. These provisions are also not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, an individual would not be permitted to challenge a courts-martial conviction under this instruction, but the individual would be able to challenge the accuracy with which a conviction has been recorded in a record.

(iv) The procedures in paragraph (d) of this section, may be applied to requests for amendments of records contained in a system of records:

Provided, That it can be identified and located.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request to amend a record, the system manager (or official occupying a comparable position with respect to a record not contained in a system of records) shall acknowledge the request in the manner prescribed by paragraph (a)(6)(i) of this section, and, within 30 days, if reasonably possible, take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified;

(B) The individual has not furnished the information needed to locate the record;

(C) The individual has not provided adequate information as to how or why the record should be amended; or

(D) The request is erroneously addressed to an official having no responsibility for the record or systems of records in question;

Inform the individual of the correct means or additional information needed for obtaining consideration of his/her request for amendment (a request may not be rejected, nor may the individual be required to resubmit his/her request, unless this is essential for processing the request).

(ii) If the system manager determines that the individual's request to amend a record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly amend the record and advise the individual, in writing, of that action and its effect. (The system manager also should attempt to identify other records under his/her responsibility affected by the requested amendment, and should make other necessary amendments, accordingly.) Amendments to records should be made in accordance with existing directives and established procedures for changing records, if applicable and consistent with 32 CFR Part 701, Subpart F. The system manager shall advise previous recipients of the record from whom a disclosure accounting has been made that the record has been amended, and of the substance of the correction.

(iii) If the system manager is a denial authority, and denial of the request for amendment, in whole or part, is warranted, take the appropriate action prescribed in paragraph (d)(3)(ii) or (iii) of this section; or

(iv) If the system manager is not a denial authority, but denial of the request for amendment, in whole or part,

appears to be warranted, forward the request to the cognizant denial authority with a copy of the disputed record, and comments and recommendations concerning disposition.

(3) Action by denial authority. (i) If the denial authority determines that amendment of the record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall direct the system manager to take the action prescribed in paragraph (d)(2)(ii) of this section.

(ii) If the denial authority determines that amendment of the record is not warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing him/her of the denial of the request and the reason(s) for the denial, including a citation of any exemption exercised and a brief discussion of the significant and legitimate governmental purpose(s) served by exercising the exemption. The denial letter shall inform the individual that he/she may request further administrative review of the matter, as follows:

(A) If the record is a fitness report or performance evaluation (including proficiency and conduct marks) from a military personnel file—by letter, within 120 days from the date of the denial letter, to:

Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy, Washington, D.C. 20350; or

(b) If the record is from a civilian Official Personnel Folder or is contained in any other Office of Personnel Management form—by letter, within 120 days from the date of the denial letter, to:

Director, Bureau of Manpower Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(C) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file—by letter, within 120 days from the date of the denial letter, to:

General Counsel, Department of the Navy, Washington, D.C. 20360.

(D) For any other record—by letter, within 120 days from the date of the denial letter, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the

denial letter and a statement of the reasons for seeking review of the initial determination denying the request for amendment. A copy of the denial letter shall be forwarded to the Chief of Naval Operations or the Commandant of the Marine Corps, as provided in paragraph (b)(2)(ii) of this section.

(iii) If the denial authority determines that a request for amendment of a record should be granted in part and denied in part, he/she shall take the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is denied.

(4) *Action by reviewing authority.* Upon receipt of a request for review for a determination denying an individual's initial request for amendment of a record, the Assistant Secretary of the Navy (Manpower and Reserve Affairs), the General Counsel, or the Judge Advocate General, as appropriate, shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination, either granting or denying amendment, in whole or in part. Those officials are designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and effectuate the determination.

(i) Within 30 working days of receipt of the request for review, the designated reviewing official shall inform the requesting individual, in writing, of the final determination and the action thereon, except that the Assistant Secretary of the Navy (Manpower and Reserve Affairs) may authorize an extension of the time limit where warranted because a fair and equitable review cannot be completed within the prescribed period of time, or for other good cause. If an extension is granted, the requesting individual shall be informed, in writing, of the reason for the delay, and the approximate date on which the review will be completed and the final determination made.

(ii) If, upon completion of review, the reviewing official determines that denial of the request of amendment is warranted under the criteria in paragraph (d)(1) of this section, the individual shall be informed, in writing:

(A) Of the final denial of the request for amendment of the record, and the reason(s) therefor;

(B) Of the right to file with the appropriate system manager a concise statement of the individual's reason(s) for disagreeing with the decision of the agency, and that such statement of dispute must be received by the system manager within 120 days following the

date of the reviewing authority's final determination;

(C) Of other procedures for filing such statement of dispute, and that a properly filed statement of dispute will be made available to anyone to whom the record is subsequently disclosed, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record;

(D) That prior recipients of the disputed record, to the extent that they can be ascertained from required disclosure accountings, will be provided a copy of the statement of dispute and, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record; and

(E) Of his/her right to seek judicial review of the reviewing authority's refusal to amend a record.

(iii) If the reviewing official determines upon review that the request for amendment of the record should be granted, he/she shall inform the requesting individual of the determination, in writing, and he/she shall direct the system manager to amend the record accordingly, and to inform previous recipients of the record for whom disclosure accountings have been made that the record has been amended and the substance of the correction.

(5) *Statements of dispute.* When an individual properly files a statement of dispute under the provisions of paragraphs (d)(4)(ii) (B) and (C) of this section, the system manager shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute. The system manager shall advise previous recipients of the record for whom accounting disclosure has been made that the record has been disputed, if the statement of dispute is germane to the information disclosed, and shall provide a copy of the individual's statement, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record.

(i) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains provided the record is integrally annotated as required above. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the

record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the system manager shall note that the information is disputed, and provide a copy of the individual's statement of dispute.

(ii) The system manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. Although these summaries may be treated as part of the individual's record, they will not be subject to the amendment procedures of this section.

§ 701.105 Disclosure to others and disclosure accounting.

(a) Summary of requirements.

Subsection (b) of 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except pursuant to the written request or consent of the individual to whom the record pertains, unless the disclosure is authorized under one or more of the 11 exceptions noted in paragraph (b) of this section. Subsection (1) of 5 U.S.C. 552a outlines criminal penalties (as prescribed in 32 CFR 701.110) for personnel who knowingly and willfully make unauthorized disclosures of information about individuals from an agency's records. Subsection (c) of 5 U.S.C. 552a requires accurate accountings to be kept, as prescribed in paragraph (c) of this section, in connection with most disclosures of a record pertaining to an individual (including disclosures made pursuant to the individual's request or consent). This is to permit the individual to determine what agencies or persons have been provided information from the record, enable the agency to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail for review of the agency's compliance with 5 U.S.C. 552a.

(b) *Conditions of disclosure.* No record contained in a system of records shall be disclosed, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls within one of the exceptions. Where the record subject is mentally incompetent, insane, or deceased, no medical record shall be disclosed except pursuant to a written request by, or with the prior written request of, the record subject's next of kin or legal representative, unless disclosure of the record falls within one of the exceptions. Disclosure to third parties on the basis of the written

consent or request of the individual is permitted, but not required, by 32 CFR Part 701, Subparts F and G.

(1) *Intra-agency.* Disclosure may be made to personnel of the Department of the Navy or other components of the Department of Defense (DOD) (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DOD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) This may include, for example, disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Navy who may be included are: Personnel of the Joint Chiefs of Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between Naval components and non-DOD agencies in connection with the Personnel Exchange Program (PEP) and inter-agency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by paragraph (b) of this section might also meet the criteria for disclosure under other exceptions specified in paragraphs (b)(2) through (12) of this section, they should be treated under paragraph (b)(1) of this section for disclosure accounting purposes.

(2) *Freedom of Information Act.* Disclosure may be made of those records, or information obtained from records, required to be released under the provisions of 5 U.S.C. 552 and 32 CFR Subparts A through D. Disclosure accountings are not required when information is disclosed under the Freedom of Information Act. That act has the general effect of requiring the release of any record which does not fall within one of the nine exemptions specified in Subpart A, § 701.5(b)(4)(ii), including an exemption for records

which, if disclosed, would result in a clearly unwarranted invasion of the personal privacy of an individual. The phrase "clearly unwarranted invasion of personal privacy" states a policy which balances the interest of individuals in protecting their personal affairs from public scrutiny against the interest of the public having available information relating to the affairs of government. The interests of the recipient or of society must be weighed against the degree of the invasion of privacy. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (e.g., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (e.g., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester. Examples of information pertaining to civilian personnel, which normally are released without an unwarranted invasion of privacy are: Name, grade, date of grade, gross salary, present and past assignments, future assignments which have been finalized, and office phone number. Disclosure of other personal information pertaining to civilian employees shall be made in accordance with 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual. Determinations as to disclosure of personal information regarding military personnel shall be made using the same balancing test as explained above. The following are examples of information concerning military personnel which can normally be released without the consent of the individual upon request, as they are a matter of public record: name, rank, gross salary, present and past duty assignments, future assignments which are finalized, office

phone number, source of commission, promotion sequence number, awards and decorations, education (major area of study, school, year of education, and degree), duty status at any given time, date of birth, marital status, and number, names, sex and ages of dependents.

(i) Disclosure of home addresses and home telephone numbers without permission shall normally be considered a clearly unwarranted invasion of personal privacy. Accordingly, disclosure pursuant to 5 U.S.C. 552 is normally prohibited. Requests for home addresses (includes barracks and Government-provided quarters) may be referred to the last known address of the individual for reply at the person's discretion. In such cases, requesters will be notified accordingly.

(ii) Disclosure is premitted pursuant to the balancing test when circumstances of a case weigh in favor of disclosure. Disclosure of home address to individuals for the purpose of initiating court proceedings for the collection of alimony or child support, and to state and local tax authorities for the purpose of enforcing tax laws, are examples of circumstances where disclosure could be appropriate. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(iii) Lists or compilations of names and home addresses, or single home addresses will not be disclosed without the consent of the individual involved, to the public including, but not limited to, individual Members of Congress, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at the individual's discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overriding interests of the individual involved.

(iv) An individual shall be given the opportunity to elect not to have his/her home address and telephone number listed in a Navy activity telephone directory. The individual shall also be excused from paying additional cost that may be involved in maintaining an unlisted number for Government-owned telephone services if the individual complies with regulations providing for such unlisted numbers. However, the exclusion of a home address and telephone number from a Navy activity telephone directory does not apply to the mandatory listing of such

information on a command's recall roster.

(v) Commands are permitted to disclose, to *military personnel within the command only*, the results of and the names of individuals receiving non-judicial punishment. Such disclosure is not considered to be a violation of 5 U.S.C. 552a.

(3) *Routine use.* Disclosure may be made for a "routine use" (as defined in § 701.103(k)) that is compatible with the purpose for which the record is collected and listed as a routine use in the applicable record system notice published in the *Federal Register*. Routine use encompasses the specific ways or processes in which the information is used, including the persons or organizations to whom the record may be disclosed, even if such use occurs infrequently. In addition to the routine uses established by the Department of the Navy for each system of records, common blanket routine uses, applicable to all record systems maintained within the Department of the Navy, have been established. See § 701.114. In the interest of simplicity and economy, these blanket routine uses are published only once at the beginning of the Department of the Navy's *Federal Register* compilation of record systems notices rather than in each system notice. Disclosure accountings are required for all disclosures made pursuant to the routine use.

(4) *Bureau of the Census.* Disclosure may be made to the Bureau of the Census for purpose of planning or carrying out a census of survey or related activity authorized by law. Disclosure accountings are required for disclosures made to the Bureau of the Census.

(5) *Statistical research or reporting.* Disclosure may be made to a recipient who has provided adequate written assurance that the record will be used solely as a statistical research or reporting record, provided the record is transferred in a form that is not individually identifiable (i.e., the identity of the individual cannot be deduced by tabulation or other methodology). The written request must state the purpose of the request, and will be made a part of the activity's accounting for the disclosure. When activities publish gross statistics concerning a population in a system of records (e.g., statistics on employer turnover rates, military reenlistment rates, and sick leave usage rates), these are not considered disclosures of records and accountings are not required.

(6) *National Archives.* Disclosure may be made to the National Archives when the record has sufficient historical or other value to warrant continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value. (Records transferred to a federal records center for storage or safekeeping do not fall under the provision. Such transfers are not considered disclosures under this Act, since the records remain under the control of the transferring element. Therefore, disclosure accounting is not required for transfers of records to federal records centers.) Disclosure accountings are required for disclosures made to the National Archives.

(7) *Civil or criminal law enforcement activity.* Disclosure may be made to another agency or instrumentality of any government jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the activity which maintains the record, specifying the particular record desired and the law enforcement purpose for which the record is sought. The head of the agency or instrumentality may have delegated authority to request records to other officials. Requests by these designated officials shall be honored if they provide satisfactory evidence of their authorization to request records. Blanket requests for all records pertaining to an individual shall not be honored. A record may also be disclosed to a law enforcement activity: *Provided*, That such disclosure has been established as a "routine use" in the published record system notice. Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this section, but may be made only pursuant to established "blanket routine uses" contained in § 701.114, pursuant to an established "routine use" published in the individual record system notice, or pursuant to other governing authority. Disclosure accountings are required for disclosure to civil or criminal law enforcement agencies, and also for disclosures pursuant to a routine use, but need not be disclosed to the individual if the law enforcement agency has requested in writing that it not be.

(8) *Emergency conditions.* Disclosure may be made under emergency conditions involving compelling circumstances affecting the health and safety of a person, provided that

notification of the disclosure is transmitted to the last known address of the individual to whom the record pertains. For example, an activity may disclose records when the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of a person. The individual about whom the records are disclosed need not necessarily be the individual whose health or safety is in peril (e.g., release of dental charts on several individuals in order to identify a person injured in an accident). In instances where information under alleged emergency conditions is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call. Disclosure accountings are required for disclosures made under emergency conditions.

(9) *Congress and Members of Congress.* Disclosure may be made to either House of Congress, or, to the extent of matters within its jurisdiction, to any committee or subcommittee thereof, or to any joint committee of Congress or subcommittee thereof. Disclosure may not be made, however, to a Member of Congress requesting in his/her individual capacity or on behalf of a constituent, except in accordance with the following rules:

(i) Upon receipt of an oral or written request from a Member of Congress or his/her staff, inquiry should be made as to the identity of the originator of the request. If the request was prompted by a request for assistance by the individual to whom the record pertains, the request information may be disclosed to the requesting Congressional office.

(ii) If the request was originated by a person other than the individual to whom the record pertains, the Congressional office must be informed that the requested information cannot be disclosed without the written consent of the individual to whom the record pertains. If the Congressional office subsequently states that it has received a request for assistance from the individual or has obtained the individual's written consent for disclosure to that office, the requested information may be disclosed.

(iii) If the Congressional office requests the Department of the Navy to obtain the consent of the individual to whom the record pertains, that office should be informed that it is the policy of the Department not to interfere in the

relationship of a Member of Congress and his/her constituent, and that the Department therefore does not contact an individual who is the subject of a congressional inquiry.

(iv) If the Congressional office insists on Department of the Navy cooperation, an effort should be made to contact, through his/her command, the individual to whom the records pertain and ascertain whether the individual consents to the disclosure. If neither the Congressional office nor the Department of the Navy obtains the individual's written consent, only information required to be released under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D should be disclosed.

Disclosure accountings are required for disclosures made to Congress or Members of Congress, except nonconsensual disclosures pursuant to 5 U.S.C. 552 provided for in paragraph (b)(9)(iv) of this section.

(10) *Comptroller General.* Disclosure may be made to the Comptroller General of the United States, or to any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office. See § 701.101(a)(2) and the SECNAVINST 5741.2 series. Disclosure accountings are required for disclosures to the Comptroller General or General Accounting Office.

(11) *Court of competent jurisdiction.* Disclosure may be made in response to an order from a court of competent jurisdiction (signed by a state or Federal court judge), subject to the following provisions:

(i) When a record is disclosed under compulsory legal process, and the issuance of that order is made public by the court which issued it, activities shall make reasonable efforts to notify the individual to whom the record pertains of the disclosure and the nature of the information provided. This requirement may be satisfied by notifying the individual by mail at the last known address contained in the activity records. Disclosure accountings are required for disclosures made pursuant to court orders.

(ii) Upon being served with an order which is not a matter of public record, an activity shall seek to be advised as to when it will become public. An accounting for the disclosure shall be made at the time the activity complies with the order, but neither the identity of the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the concerned individual unless the

court order has become a matter of public record.

(12) *Disclosure of records to contractors.* The disclosure of records required by the contractor for the operation, use or maintenance of a system of records in the performance of a government contract shall not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record since systems of records operated under contract to accomplish a Navy function, is in effect, maintained by the Department of the Navy. Disclosure of personal information between the Department of the Navy and the contractor is considered to be the same as between those officers and employees of the Department of the Navy who have a need for the records in the performance of their duties.

(c) *Disclosure accountings—(1) Responsibilities.* With respect to a disclosure of a record which it maintains in a system of records, each activity is responsible for keeping an accurate accounting of the date, nature, and purpose of the disclosure, and the name and address of the person or agency to whom the disclosure is made. When disclosure is made by an activity other than the activity that is responsible for maintaining the record, the activity making the disclosure is responsible for giving written notification of the above information to the activity responsible for maintaining the record, to enable the latter activity to keep the required disclosure accounting.

(2) *Disclosures for which accountings are required.* A disclosure accounting is required for all disclosures of records maintained in a system of records, except: Intra-agency disclosures pursuant to paragraph (b)(1) of this section; Freedom of Information Act disclosures pursuant to paragraph (b)(2) of this section or paragraph (b)(9)(iv) of this section; or disclosure pursuant to paragraph (b)(12) of this section; or disclosures for statistical research or reporting purposes pursuant to paragraph (b)(5) of this section. A disclosure accounting is required for a disclosure made to another person or agency pursuant to the request or consent of the individual to whom the record pertains. There is no requirement for keeping an accounting for disclosures of disclosure accountings.

(3) *Accounting method.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. For most paper records, it may be suitable to maintain the accounting on a record-by-record basis,

physically affixed to the records. The primary criteria are that the selected method be one which will:

(i) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(ii) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(iii) Provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart.

(4) *Retention of accounting record.* A disclosure accounting, if one is required, shall be maintained for the life of the record to which the disclosure pertains, or for at least five years after the date of the disclosure for which the accounting is made, whichever is longer. Nothing in 5 U.S.C. 552a or 32 CFR Part 701, Subparts F and G requires retaining the disclosed record itself longer than for the period of time provided for it in the SECNAVINST 5212.5 series, but the disclosure accounting must be retained for at least five years.

(5) *Accounting to the individual.* Unless an applicable exemption has been exercised, systems managers or other appropriate custodial officials shall provide all information in the disclosure accounting to an individual requesting such information concerning his/her records, except entries pertaining to disclosures made pursuant to paragraph (b)(11)(ii) of this section and disclosures made at the written request of the head of another agency or government instrumentality for law enforcement purposes under paragraph (b)(7) of this section. Activities should maintain the accounting of the latter two types of disclosures in such a manner that the notations are readily segregable, to preclude improper release to the individual. The process of making the accounting available may also require transformation of the data in order to make it comprehensible to the individual. Requests for disclosure accountings otherwise available to the individual may not be denied unless a denial authority for the designated review authority has exercised an applicable exemption and denied the request, and then only when it has been determined that denial of the request would serve a significant and legitimate Government purpose (e.g., avoid interfering with an ongoing law enforcement investigation). Appropriate procedures prescribed in § 701.104(b), for exercising an exemption, denying a request and reviewing a denial apply also to disclosure accounting to the individual.

(d) *Accuracy requirements.* Prior to disclosing any record about an individual to any person other than to personnel of the agency, with a need to know, and other than pursuant to 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D, reasonable efforts are required to ensure that such records are accurate, complete, timely, and relevant for Department of the Navy purposes. It may be appropriate to advise the recipient that the information was accurate as of a specific date, or otherwise give guidance concerning its quality.

(e) *Mailing lists.* No activity nor any member or employee of the Department of the Navy shall sell or rent individuals' names and addresses unless such action is authorized by law. This provision should not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 701.106 Collection of personal information from individuals.

(a) *Collection directly from the individual.* Personal information shall be collected, to the greatest extent practicable, directly from the individual when the information may adversely affect an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made when warranted. The following are examples, not necessarily exhaustive, of situations which may warrant exceptions:

(1) There is need to ensure the accuracy of information supplied by an individual by verifying it through a third party, e.g., verifying information for a security clearance;

(2) The nature of the information is such that it can be obtained only from a third party, such as supervisor's assessment of an employee's performance in a previous job or assignment; or

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) *Informing individuals from whom personal information is requested.* (1) Individuals who are asked to supply personal information about themselves for a system of records must be advised of:

(i) The authority (statute or Executive order) which authorizes the solicitation;

(ii) All major purposes for which the Department of the Navy uses the information (e.g., pay entitlement, retirement eligibility, or security clearance);

(iii) A brief summary of those routine uses to be made of the information as published in the Federal Register and distributed by current OPNAVNOTE 5211, and

(iv) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to respond.

(2) This statement, which is referred to as a "Privacy Act statement," must be given regardless of the medium used in requesting the information, e.g., a blank sheet, preprinted form with a control number, format, questionnaire, survey sheet, or interview. It may be provided on the form used to collect the information, or on a separate form or sheet, a copy of which may be retained by the individual. There is no requirement that the individual sign the statement.

(3) When the Privacy Act statement is to be attached or provided with the form, the statement will be assigned the same identifying number as the form used in collecting the information, and the suffix, "Privacy Act Statement." For example, a DD Form 398 would be identified as "DD Form 398—Privacy Act Statement . . ." For unnumbered formats, such as questionnaires and survey report forms, the Privacy Act statement will bear the report control symbol, if one applies, or the OMB number, i.e., "OMB Approval No. 21-R0268, Privacy Act Statement." The statement will be positioned in such a manner that individuals from whom the information is being collected will be informed about the act before they begin to furnish any of the information requested.

(4) For the purpose of determining whether a Privacy Act statement is required, "personal information" should be considered to be information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. See § 701.105(b)(2). It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his/her Federal employment or military assignment.

(5) The head of the proponent activity (i.e., the initiating or sponsoring activity) is responsible for determining whether a Privacy Act statement is required, and for ensuring that it is prepared and available as an attachment or as a part of the form, etc.

(c) *Social Security Numbers*—(1) *Requesting an individual's social security number (SSN).* Department of the Navy activities may not deny an individual any right, benefit, or privilege

provided by law because the individual refuses to disclose his/her SSN, unless such disclosure is required by Federal statute or, in the case of systems of records in existence and operating before January 1, 1975, where such disclosure was required under statute or regulation adopted prior to January 1, 1975 to verify the identity of an individual. E.O. 9397 authorizes this Department to use the SSN as a system of numerical identification of individuals.

(2) *Informing an individual when requesting his/her SSN.* When an individual is requested to disclose his/her social security number, he/she must be given a statement containing information required in paragraph (b) of this section.

(3) An activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act statement for the SSN, alone, or a merged Privacy Act statement, covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the activity must be prepared to identify the individual by alternate means.

(4) Once a military member or civilian employee of the Department of the Navy has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into naval service or employment, the SSN becomes his/her service or employment identification number. It is not required that such an individual be informed of the items under paragraph (b)(1) of this section when he/she is subsequently requested to provide or verify this identification number in connection with those records.

§ 701.107 Safeguarding personal information.

(a) *Legislative requirement.* The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is required.

(b) *Responsibilities.* At each location, and for each system of records, an official shall be designated as having responsibility for safeguarding the information therein. Specific safeguards

for individual systems must be tailored to the existing circumstances, with consideration given to sensitivity of the data, need for continuity of operations, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc.

(c) *Minimum safeguards.* Ordinarily, personal information should be afforded at least the protection required for information designated as "For Official Use Only." For privacy, the guideline is to provide reasonable safeguards to prevent inadvertent or unauthorized disclosures of record content, during processing, storage, transmission, and disposal.

(d) *Automatic data processing.* The Chief of Naval Operations (Code Op-942) is responsible for determining and formulating policies and procedures, as necessary, to ensure that ADP systems containing personal information contain adequate safeguards to protect personal privacy, and are in accordance with the OPNAVINST 5239.1 series and SECNAVINST 5239.1 series.

(e) *Disposal*—(1) *General.* Reasonable care must be taken to ensure that personal information is not subject to unauthorized disclosure during records disposal. Records which contain personal information pertaining to individuals should be disposed of in such a manner as to preclude recognition or reconstruction of information contained therein, such as by pulping, tearing, shredding, macerating or burning. Records recorded on magnetic tapes or other magnetic media may be disposed of by degaussing or erasing. If contractors are hired to haul trash containing personal information, contract provisions as specified in § 701.109(a) should be incorporated into the contract. If paper trash containing personal information is sold for recycling, legal assistance should be obtained to insert in the sale contract clauses that will make the buyer a Government contractor subject to the provisions of 5 U.S.C. 552a.

(2) *Massive computer cards and printouts.* (i) The transfer of large quantities of computer cards and printout in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under this instruction. The volume of such data when turned over in bulk transfers make it difficult, if not impossible, to identify a specific individual record. Therefore, there are no special procedures required when disposing of large numbers of punch cards, computer printouts or other large detailed listings and normal document disposal procedures may be followed.

(ii) If the systems manager believes that the data to be transferred in bulk for disposal is in a form where it is individually recognizable or is not of a sufficient quantity to preclude compromise, the records should be disposed of in accordance with this paragraph.

§ 701.108 Exemptions.

(a) *Summary.* Subsections (j) and (k) of 5 U.S.C. 552a authorize the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements of 5 U.S.C. 552a. In accordance with 32 CFR Part 701, Subpart E, publication of a general notice of a proposed rule concerning exemptions for systems of records is required to appear in the *Federal Register* at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 32 CFR Part 701, Subpart G, indicates the systems designated as exempted, the type of exemption claimed, the authority and reasons for invoking the exemption, and the provisions of 5 U.S.C. 552a from which each system has been exempted. The two categories of exemptions are general and specific. No system of records, however, is automatically exempt from all provisions of 5 U.S.C. 552a.

(b) *General exemption.* To be eligible for a general exemption under the authority of subsection (j)(2), 5 U.S.C. 552a, the system of records must be maintained by an activity whose principal function involves the enforcement of criminal laws and must consist of:

(1) Data, compiled to identify individual criminals and alleged criminals which consists only of identifying data and arrest records and type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Data that supports criminal investigations (including efforts to prevent, reduce, or control crime) and reports of informants and investigators that identify an individual; or

(3) Reports on a person, compiled at any state of the process of law enforcement, from arrest or indictment through release from supervision.

(c) *Specific exemptions.* To be eligible for a specific exemption under the authority of subsection (k), 5 U.S.C. 552a, the pertinent records within a designated system must contain one or more of the following:

(1) Information specifically authorized to be classified. Before denying a person access to classified information, the

denial authority must make sure that it is properly classified under the criteria of E.O. 12065, and that it must remain so in the interest of national defense or foreign policy ((k)(1) exemption).

(2) Investigative records compiled for law enforcement purposes (other than that claimed under the general exemption). If this information has been used to deny someone a right, however, the Department of the Navy must release it unless doing so would reveal the identity of a confidential source ((k)(2) exemption).

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. Sec. 3056 ((k)(3) exemption).

(4) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(5) Data, compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).

(7) Information to determine promotion potential in the Armed Forces. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source ((k)(7) exemption).

(d) *Limitations on denying notification, access, and/or amendment on the basis of an exemption—(1) Classified information.* Prior to denying a request for notification, access or amendment concerning a classified record on the basis of a subsection (k)(1) exemption, denial authorities having classification jurisdiction over the classified matters in the record shall review the record to determine if the classification is proper under the criteria of the OPNAVINST 5510.1 series. If the denial authority does not have classification jurisdiction, immediate coordination shall be effected with the official having classification jurisdiction, in order to obtain a review of the propriety of the classification. If it is determined upon review that the classification is proper, consideration shall also be given to the

appropriateness of permitting the requester to view the record in classified form: *Provided*, That he/she has or can be given the requisite security clearance.

(2) *Law enforcement records.* Requests for notification or access shall not be denied on the basis of a subsection (k)(2) exemption if the requested record has been used as a basis for denying the individual a right, benefit, or privilege to which he/she would be entitled in the absence of the record, except that access may be limited to the extent necessary to protect the identity of a confidential source, as defined in paragraph (e) of this section. Additionally, neither a subsection (j)(2) nor a subsection (k)(2) exemption shall be the basis for a denial of a request for notification or access concerning a record, or a portion thereof, unless granting the request is in accordance with the exemptions specified in 5 U.S.C. 552a, and would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source in the course of a criminal investigation or in the course of a lawful national security intelligence investigation;

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their effectiveness;

(vi) Endanger the life or physical safety of law-enforcement personnel; or

(vii) Otherwise be deemed not releasable under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D.

(e) *Confidential sources.* For the purposes of subsection (k) exemptions, a "confidential source" is a person who has furnished information to the Federal government under:

(1) An express promise that his/her identity would be held in confidence, or

(2) An implied promise made prior to September 27, 1975, that his/her identity would be held in confidence.

(f) *Promises of confidentiality.* Express promises of confidentiality shall be granted on a selective basis, and only when such promises are needed and are in the interest of the service. Officials exercising denial authority shall establish appropriate procedures and standards governing the granting of confidentiality for records systems under their cognizance.

§ 701.109 Contractors.

(a) *Contracts to maintain records.* Any unit, activity, or official letting a contract that involves the maintenance of a system of records to accomplish a Department of the Navy purpose shall include in that contract such terms as are necessary to incorporate the relevant provisions of 5 U.S.C. 552a in accordance with Defense Acquisition Regulation 1-327, "Protection of Individual Privacy," July 1, 1976.

(b) *Contracting officers.* Contracting officers shall review all requirements for service contracts to determine if the requirements may result in the design, development, or operation of a system of records on individuals. If it is determined that such is involved, the solicitation to meet the requirement shall contain notice similar to the following:

Warning

This procurement action requires the contractor to do one or more of the following: operate, use or maintain a system of records on individuals to 1974 (Pub. L. 93-597; 5 U.S.C. 552a) imposes requirements on how these records are collected, maintained, used, and disclosed. Violations of the Privacy Act may result in termination of any contract resulting from this solicitation as well as imposition of criminal or civil penalties.

§ 701.110. Judicial sanctions.

(a) Subsection (i)(1) of 5 U.S.C. 552a prescribes criminal penalties for violation of its provisions. Any member or employee of the Department of the Navy may be found guilty of a misdemeanor and fined not more than \$5,000 for willfully:

(1) Maintaining a system of records without first meeting the public notice requirements.

(2) Disclosing information protected under the Privacy Act to any unauthorized person/agency.

(3) Obtaining or disclosing information about an individual under false pretenses.

§ 701.111 Rules of access to agency records.

5 U.S.C. 552a, as implemented in 32 CFR Part 701, Subparts F and G, provides for individuals to have access to agency records, pertaining to themselves, with certain limited exceptions. The following rules of access are in effect:

(a) Requests for access must be submitted in writing to (*name or organizational title of record custodian*).

(b) Individuals desiring to review records pertaining to themselves are urged to submit their requests by mail or in person, 10 days before the desired review date. Every effort will be made

to expedite access when necessary, but records ordinarily cannot be made available for review on the day of the request. In the case of a request to provide records directly to an authorized representative who is other than the parent of a minor or other legal guardian, an authorization signed within the preceding 45 days, by the individual to whom the records pertain, specifying the records to be released, will be required. Notarized authorizations may be required if the sensitivity of the information in the records warrants.

(c) Information should be provided by the individual to assist in identifying relevant systems of records and individual identifiers should also be furnished (e.g., full name, social security number, etc.) to locate records in the particular system.

(d) Review of the record may be accomplished between the hours of — and — in room — of building —.

(e) When the individual reviews records in person, the custodian will require the presentation of identification before permitting access to the record. Acceptable forms of identification include military identification card, base or building pass, driver's license, or similar document. When the individual requests access to information by mail, verification of identity may be obtained by requiring him/her to provide certain minimum identifying data such as date of birth and any other item in the record that only the concerned individual would likely know.

(f) Individuals may be accompanied by a person of their own choosing when reviewing the record. The custodian will not, however, discuss the record in the presence of the third person without the written authorization of the individual to whom the record pertains.

(g) On request, copies of the record will be provided at a cost specified. Fees will not be assessed if the cost is less than \$30.

(h) A medical record will not be released to the individual if, in the judgment of a physician, the information contained therein could have an adverse effect on the individual's physical or mental well-being. In such circumstances, the individual will be asked to provide to the record custodian the name of a personal physician along with written authorization for release of the record to that physician. The record then will be provided to the named physician.

(i) Questions concerning these Rules of Access, or, information contained in the record, should be addressed to (*title or official of organizational title*), room

—, building —, telephone number —.

§ 701.112 Rules for amendment requests.

5 U.S.C. 552a, as implemented by 32 CFR Part 701, Subparts F and G, provides for individuals to request amendment of their personal records when the individuals believe the records are inaccurate, irrelevant, untimely, or incomplete. The following rules for amendment requests are in effect:

(a) Requests must be in writing and must indicate that they are being made under the Privacy Act (5 U.S.C. 552a), 32 CFR Part 701, Subparts F and G, or the SECNAVINST 5211.5 series. Requests should contain sufficient information to locate and identify the particular record which the requester is seeking to amend (e.g., full name, social security number, date of birth, etc.). A request should also contain a statement of the changes desired to be made to the record, the reasons for requesting amendment, and any available information the requester can provide in support of the request, including pertinent documents and related records.

(b) Requests for amendment must be submitted to the appropriate system manager designated in the published record system notice.

(c) A letter indicating receipt will be sent to the requester within 10 working days after the request has been received by the appropriate system manager. The letter will contain details as to when the requester may expect to be advised of action taken on the request. The requester may also be asked to provide additional verification of his/her identity. This is to protect the privacy of other individuals by ensuring that the requester is seeking to amend his/her own records and not, inadvertently or intentionally, the records of another individual.

(d) A letter indicating whether or not the request for amendment has been granted will be sent to the requester as soon as a decision has been reached by the appropriate authority. If it is determined that the requested amendment is warranted, the requester will be advised of the action taken and of the effect of that action. If it is determined that the requested amendment is not warranted, the requester will be advised of the reasons for the refusal and of the procedures and time limits within which the requester can seek further review of the refusal.

§ 701.113 Rules of conduct under the Privacy Act.

(a) *Maintaining personal records.* It is unlawful to maintain systems of records

about individuals without prior announcement in the **Federal Register**. Anyone who does is subject to criminal penalties up to \$5,000. Even with such notice, care shall be taken to keep only such personal information as is necessary to do what law and the President, by Executive order, require. The information is to be used only for the purposes described in the **Federal Register**.

(b) *Disclosure*. Information about an individual shall not be disclosed to any unauthorized individual. Anyone who makes an unauthorized disclosure on purpose may be fined up to \$5,000. Every member or employee of the Department of the Navy who maintains records about individuals has an obligation to do his/her part in protecting personal information from unauthorized disclosure. 32 CFR Part 701, Subparts F and G, describe when disclosures are authorized.

(c) *Individual access*. Every individual, with certain exceptions, has the right to look at any record the Department of the Navy keeps on him/her, to copy it, and to request to have it corrected if he/she considers it wrong. The individual attempting to exercise these rights shall be given courteous and considerate assistance.

(d) *Ensuring accuracy*. The Department of the Navy has an obligation to use only accurate, timely, relevant, and complete information when making decisions about individuals. Every member, official, and employee involved in keeping records on individuals shall assist in the discharge of this obligation.

§ 701.114 Blanket routine uses.

(a) *Routine use—Law enforcement*. In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(b) *Routine use—Disclosure when requesting information*. A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information

or other pertinent information, such as current licenses, if necessary to obtain information, relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) *Routine use—Disclosure of requested information*. A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine use—Congressional inquiries*. Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine use—Within the Department of Defense*. A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the component requesting the record.

(f) *Routine use—Private relief legislation*. Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine use—Disclosures required by international agreements*. A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(h) *Routine use—Disclosure to state and local taxing authorities*. Any information normally contained in IRS Form W-2, which is maintained in a record from a system of records maintained by this Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.C., Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

(i) *Routine use—Disclosure to the Office of Personnel Management (OPM)*. A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the OPM concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for OPM to carry out its legally authorized Government-wide personnel management functions and studies.

Subpart G—Privacy Act Exemptions

Authority: 5 U.S.C. 552a, 32 CFR 286a.

§ 701.115 Purpose.

32 CFR Part 701, Subparts F and G contains rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and Subpart F, § 701.108, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.116 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempted from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under E.O. 12356 and that is required by that Executive order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.117 Exemptions for specific Navy record systems.

(a) *Office of the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity)*.

(1) ID—N05527-5.

Sysname. Navy Central Clearance Group (NCCG) Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) and (H), and (f).

Authority. 5 U.S.C. 552a(k)(1) and (5).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, or access to classified information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(2) ID—N05520-3.

Sysname. Civilian Personnel Security Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), and (5).

Reasons. Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information compiled for law enforcement purposes in this system of records could interfere with orderly investigations by disclosing the existence of investigations and investigative techniques, and result in the concealment, destruction, or fabrication of evidence.

(b) *Naval Military Personnel Command.*

(1) ID—N05520-1.

Sysname. Personnel Security Eligibility Information System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (5) and (7).

Reasons. Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants,

witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide information to the Government under an express or implied promise of confidentiality.

(2) ID—N01610-1.

Sysname. Navy Personnel Evaluation System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (5), and (7).

Reasons. Granting individuals access to information collected and maintained in this system could result in disclosure of classified material, jeopardize the safety of informants and witnesses and their families, and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified material and to information that will not disclose the sources who provided the information under an express or implied promise of confidentiality.

(3) ID—N05354-1.

Sysname. Equal Opportunity Information and Support System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), and (5).

Reasons. Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(4) ID—N01420-1.

Sysname. Officer Promotion System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to

unclassified material and to information that does not disclose the identity of a confidential source.

(5) ID—N01070-3.

Sysname. Navy Personnel Records System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Granting individuals access to certain portions of the information collected and maintained in this system of records could result in the unauthorized disclosure of classified material. Material will be screened in order to provide access to unclassified information that does not disclose the identity of a source who provided information under an express or implied promise of confidentiality.

(6) ID—N01640-1.

Sysname. Individual Correctional Records.

Exemption. Portions of this system are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to portions of these records pertaining to consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods, used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(c) *Navy Recruiting Command.*

(1) ID—N01131-1.

Sysname. Officer Selection and Appointment System.

Exemption. Portions of this system of records are exempt from the following

subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(2) *ID—N01133-2.*

Synname. Recruiting Enlisted Selection System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

(d) *Naval Security Group Command.*

(1) *ID—N05527-4.*

Synname. Naval Security Group Personnel Security/Access Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) through (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(e) *Naval Investigative Service.*

(1) *ID—N05520-4.*

Synname. NIS Investigative Files System.

Exemption (1). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority (1). 5 U.S.C. 552a (j)(2).

Reasons (1). Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this

information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this Component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of the other cited provisions.

Exemption (2). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2). 5 U.S.C. 552a (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6).

Reasons (2). The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record. The notice for this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the

Federal Register in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(f) *Naval Intelligence Command.*

(1) *ID—N03834-1.*

Synname. Special Intelligence Personnel Access File.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and

was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

(g) *Naval Material Command.*

(1) ID—N04385-1.

Sysname. Investigatory (Fraud) System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), and (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by this component.

(h) *Naval Resale System Office.*

(1) ID—N012930-1.

Sysname. Industrial Relations Personnel Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d), (e)(4) (G) and (H), and (f).

Authority. 5 U.S.C. 552a(k) (5) and (6).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would

compromise the objectivity or fairness of the testing or examination process.

(i) *Navy and Marine Corps Exchanges and Commissaries.*

(1) ID—N04060-1.

Sysname. Navy and Marine Corps Exchange and Commissary Security Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a(k)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(j) *Naval Clemency and Parole Board.*

(1) ID—N05819-3.

Sysname. Naval Clemency and Parole Board Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(4), (d), (e)(4)(G), and (f).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(k) *Office of the Secretary.*

(1) ID—N01070-9.

Sysname. White House Support Program.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (3), and (5).

Reasons. Exempted portions of this system may contain information which has been properly classified under E.O.

12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law-enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(l) *Security Operations Activities.*

(1) ID—N05527-1.

Sysname. Security Incident System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(m) *Naval Medical Command.*

(1) ID—N06320-2.

Synname. Family Advocacy Program System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3) and (d).

Authority. 5 U.S.C. 552a (k)(2) and (5).

Reasons. Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

§ 701.118 Exemptions for specific Marine Corps records systems.

a. ID—MMN00018.

Synname. Base Security Incident Reporting System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(6), (f), and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information

could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of other cited provisions.

b. ID—MIN00001.

Synname. Personnel Security Eligibility and Access Information System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(2), (3), and (5) as applicable.

Reasons. Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

Exempted portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: August 22, 1983.

F. N. Oltie,

Lieutenant Commander, JAGC, U.S. Navy,
Alternate Federal Register Liaison Officer.

(FR Doc. 83-23290 Filed 8-24-83; 8:45 am)

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-83-20]

Special Local Regulations; Milwaukee Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the MILWAUKEE AIR SHOW which is to be conducted over Lake Michigan at the Milwaukee Summerfest Grounds on September 18, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 18 September at 11:00 am and terminate at 12:30 pm on 18 September 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impractical. The application to hold the event was not received in a timely manner, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Milwaukee Air Show will be conducted over Lake Michigan at the Milwaukee Summerfest Grounds on September 18, 1983. This event will have low flying aircraft demonstrations, aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Milwaukee, Wisconsin).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0920 to read as follows:

§ 100.35-0920 Lake Michigan/Milwaukee Harbor.

(a) *Regulated Area.* That portion of Lake Michigan and Milwaukee Harbor enclosed by a line running from a point

on the shore at 43 degrees 02.6 minutes North 87 degrees 53.2 minutes West to a point on the breakwall at 43 degrees 02.6 minutes North 87 degrees 52.8 minutes West then along the breakwall to its end at position 43 degrees 01.6 minutes North 87 degrees 52.9 minutes West then west to the pierhead light at position 43 degrees 01.6 minutes North 87 degrees 53.7 minutes West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 11:00 A.M. (local time) until 12:30 P.M. (local time), September 18, 1983.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: August 16, 1983.

Henry H. Bell,

Rear Admiral, Ninth Coast Guard District, U.S. Coast Guard.

[FR Doc. 83-23356 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-83-16]

Special Local Regulations; 1983 Cleveland National Air Show, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the CLEVELAND NATIONAL AIR SHOW which is to be conducted over the eastern portion of Cleveland Harbor on the 3rd, 4th, and

5th of September, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 3 September and terminate on 5 September, 1983, from 8:00 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impractical. The application to hold the event was not received in a timely manner, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Officer of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 1983 Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor on September 3, 4, and 5, 1983. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—AMENDED

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 Lake Erie/Cleveland Harbor.

(a) *Regulated Area:* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northwest corner of Dock No. 34 northwest to 41 degrees 31 minutes North 81 degrees 42 minutes 16 seconds

West, then east to a point on the breakwall at 41 degrees 32 minutes 02 seconds North 81 degrees 40 minutes 03 seconds West, then southeast to a point on shore at 41 degrees 31 minutes 54 seconds North 81 degrees 39 minutes 54 seconds West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 8:00 A.M. (local time) until 6:00 P.M. (local time), September 3, 4, and 5, 1983.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: August 16, 1983.

Henry H. Bell,

Rear Admiral, Ninth Coast Guard District, U.S. Coast Guard.

[FR Doc. 83-23356 Filed 8-24-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD5-82-30]

Anchorage Ground; Eastern Branch, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Verebely and Associates, the Coast Guard is disestablishing Anchorage R in the Eastern Branch of the Elizabeth River, Norfolk, Virginia. This change is being made to allow construction of a rip-rap dike within a portion of Anchorage R to stabilize the shoreline. Because of the